

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1456 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE

and

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 No

SETALVAD BROTHERS, THROUGH PARTNER KISHOREBHAI B SETALWAD

Versus

NJ DORIA, AND OR HIS SUCCESSOR IN OFFICE,

Appearance:

MR KA PUJ for Petitioner

MR MANISH R BHATT for Respondent No. 1

CORAM : MR.JUSTICE A.R.DAVE

and

MR.JUSTICE M.S.SHAH

Date of decision: 10/04/2000

ORAL JUDGEMENT

(per A.R. Dave, J.)

Rule. Learned Advocate Shri M.R. Bhatt waives service of rule for the respondent. At the request of the learned advocates, and looking to the facts of the case, the petition is finally heard today.

We have heard learned advocate Shri Puj appearing for the petitioner and learned advocate Shri B.B. Naik along with learned advocate Shri M.R. Bhatt for the respondent.

The petitioner has approached this court with a grievance regarding non issuance of a certificate under sec. 230A(1) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act'). The petitioner had sold Plots Nos. 1, 2 and 3 of Sub-Plot No. A of R.S. No. 257 situated at village: Nagalpur, Highway, Mehsana, to Sakar Owners Association for a consideration of Rs. 23 lacs. For getting the sale deed registered it was necessary for the petitioner to obtain necessary certificate from the respondent authority under the provisions of sec. 230A(1) of the Act. When the petitioner had submitted an application for the requisite certificate, the application was rejected on the ground that certain proceedings of the petitioner were pending before the Income-tax Authorities and a sum of Rs. 7,04,567/- was payable by the petitioner to the Income-tax Authorities and till the said amount was not paid, the petitioner would not be given the requisite certificate.

At the time of hearing of this petition, learned advocate Shri Puj has submitted that the petitioner is filing an affidavit giving an assurance to this court that another property belonging to the petitioner, which is worth Rs. 65, lacs named "Setalvad House" situated at Mirzapur Road, Ahmedabad, shall not be disposed of or shall not be dealt with or no encumbrance or any charge shall be created thereon till the appeals filed by the petitioner for the Assessment Years 1993-94 and 1995-96, in respect of which the amount of tax is payable by the assessee are finally disposed of. The said affidavit is taken on record.

In view of the assurance given to this court and the affidavit filed by the partner of the firm, we are of the view that no harm would be caused to the respondent department if the certificate as required by the petitioner under the provisions of sec. 230A(1) of the Act is given to the petitioner, so as to enable the

petitioner to get necessary sale deed registered before the concerned authority. Learned Advocate Shri Naik could not raise any objection in view of the fact that the department was fully secured as value of the property, which is not to be disposed of during pendency of the appeals, is approximately Rs. 65 lacs whereas the amount of tax demanded by the department from the assessee is much less than the said amount.

Looking to the fact that satisfactory provision for payment of existing tax liability under the Act has been made by the assessee, we direct the respondent to issue income-tax clearance certificate to the petitioner so as to enable the petitioner to get the deed of transfer registered. The said certificate shall be issued to the petitioner within two weeks from the date of receipt of this order by the respondent.

The petition stands disposed of as allowed. Rule is made absolute with no order as to costs.

Direct service permitted.

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